IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION(REVIEW) NO. 18 OF 2005

Shri Ananta Ayu Naik
(deceased) major in age,
agriculturist, r/o Nagzar,
Bhoma, Ponda, Goa, through
legal heirs:
1(a) Gokuldas Anant Naik
aged 33 years, r/o.
Nagzarwada, Bhoma.

1(b) Smt.Meera Gokuldas Naik,
w/o. Gokuldas Anant Naik,
aged 30 years, r/o. Nagzarwada,
Bhoma.

1(c) Mr. Prakash Anant Naik
aged 30 years, r/o.
Nagzarwada, Bhoma.

1(d) Mrs. Sukanti Prakash Naik,
aged 28 years, w/o.Prakash
Anant Naik, r/o. Nagzarwada,
Bhoma.

1(e) Master Ramrai Anant Naik,
aged 27 years, r/o. Nagzarwada,
Bhoma(since deceased) through
legal heirs respondent No.1-g).

1(f) Miss Lata Anant Naik
aged 25 years, r/o Nagzarwada,
Bhoma.

1(g) Master Bity Anant Naik
alias Ratnakar Anant Naik
(since deceased) aged 23 years,
r/o. Nagzarwada, Bhoma.

1(h) Smt. Manik Manguesh
Bhishaji, c/o. Manguesh
Bhishaji, Peoples High
School, Panaji-Goa.

1(i) Shri Manguesh Bhisaji,
Peoples High School,
Panaji-Goa.

1(j) Smt. Sukanti Ramrai Naik,
aged 30 years, Nagzarwada,
Bhoma, P.O. Marcela. ... Applicants

versus

Vishnu Shankar Naik,
aged 55 years, son of Shankar
Naik, agriculturist, r/o.Nagzar,
Bhoma, Ponda, Goa. ... Respondent

Mr. U. S. Kolwalkar, Advocate for the Applicants.

Mr. S. D. Lotlikar, Senior Advocate with Ms. Shreya Naik, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 10TH FEBRUARY, 2006.

ORAL ORDER

Heard Mr. U. S. Kolwalkar, the learned Counsel on

behalf of the applicants and Mr. S. D. Lotlikar, the learned Senior Counsel on behalf of the respondents.

2. This review application has been filed by the applicants, to review the Judgment of this Court dated 23-9-2005 in S.A. No.9/2001. In allowing the said second appeal this Court had observed that the exparte Order need not necessarily be an order which is a nullity and here was a case where the declaration given by the Mamlatdar, though exparte, was a declaration given by a Court of competent jurisdiction and as long as the defendant had not challenged the said declaration either before the Mamlatdar or any Reviewing authorities or for that matter before a Civil Court on the ground that it was a nullity it was impermissible for the learned Additional District Judge just to examine the extracts of the proceedings, and without any evidence being led, to come to the conclusion that the said declaration was obtained by jugglery and the said declaration as long as it was not set aside in competent proceedings was binding on a Civil Court and the learned Additional District Judge based on the said declaration ought to have decreed the suit of the plaintiff.

3. Mr. Kolwalkar submits that the said declaration obtained by the appellant before the Mamlatdar dated 21-9-1998 was without jurisdiction inasmuch as the Mamlatdar had no jurisdiction to grant the same, as it has been held by this Court that when there is a dispute between two tenants the jurisdiction is that of the Civil Court. In support of the said submission Mr. Kolwalkar has placed reliance on the Judgment of this Court in the case of **Inacio Mariano Dias** v. **Palmira Valadares** (1995 (1) G.L.T. 97) wherein this Court had held in para 11 as follows:-

> "Normally, as a rule the bar of Civil Court cannot be inferred or enlarged but only a restricted meaning could be attributed. Now let us refer to Section 58 of the Act. Section 58(2) says that save as provided in this Act, no Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar, Tribunal, Collector or Government, and no order passed by these authorities under this Act shall be questioned in any Civil or Criminal Court. As per this section what has been excluded

> from the jurisdiction of the Civil Court is the matter which has to be settled, decided or dealt with by the Mamlatdar under this Act. Matter to be dealt with under Section 8A as I have already found is a matter arising between landlord and tenant. Both the Courts below have erroneously found that the relief sought in the suits is the relief which can be granted, settled or dealt with by the Mamlatdar. As I pointed out earlier, the reliefs provided under Section 8A can be expressed only against the landlord and not against any other person including those persons who set up rival tenancies. Threatened dispossession of the petitioners is not only a matter to be settled or decided or dealt with by the Act".

4. It is to be noted that in the case of **Inacio Dias** v. **Palmira Valadares**(supra) both the parties had claimed that they were tenants in relation to the property owned by the Communidade of Carambolim surveyed under nos.280/1 and 288/1. As far as the case at hand is concerned, there is no dispute that the appellant who had claimed to be a tenant of Vasant Gangadhar Sinai Kenkre had not only arrayed the said

Vasant as a party respondent but also the respondent herein who had also claimed to be a tenant of the disputed property belonging to the said Kenkres. Since said declaration was obtained by the applicants/appellants not only against the person who also claimed to be a tenant but as well as the landlord of the property, in my view, the said declaration could not be said to be without jurisdiction. Considering the facts, in my view, the ratio of **Inacio Dias** v. **Palmira Valadares**(supra) is inapplicable to the facts of the case at hand. That apart, review jurisdiction is not a matter of changing the views but only for correction as errors apparent on the face of the record and the like. There is none such error. Hence the application is hereby dismissed.

N. A. BRITTO, J.

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